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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/480,826	01/10/2000	Charles S. Taylor	GUID-006CON5	4782

36154 7590 08/17/2009

LAW OFFICE OF ALAN W. CANNON
942 MESA OAK COURT
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EXAMINER	
BUI, VY Q	
ART UNIT	PAPER NUMBER
3773	
MAIL DATE	DELIVERY MODE
08/17/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/480,826	TAYLOR ET AL.	
	Examiner	Art Unit	
	Vy Q. Bui	3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 May 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16, 19-23, 26-27* is/are pending in the application.

4a) Of the above claim(s) *4,9-13,15,19-23 and 26* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,5-8,14,16 and 27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant explicitly elected of the invention as shown in Fig. 33, species 15, claims 1-3, 5-8, 14, 16 without traverse in the reply filed on 10/20/20/2008 (page 2). Paper 10/22/2008 (page 2) also clearly admitted that claim 5 is generic to claim 9 and claim 14 is generic to claims 15 and 19. The Applicant did not assert that claims 9, 15 and 19 read on elected species as shown in Fig. 33. Therefore, withdrawal of claims 9, 15 and 19 from further consideration is proper. When the generic independent claims 5 and 14 are allowed, dependent claims 9, 15 and 19 will be rejoined.

Telephone Interview

Applicants requested a declaration of an interference between the current invention and U.S. Pat. No. 5,984,867 to Robert K. Deckman (paper 1/31/2000).

In a telephone interview between the Applicants and Primary Examiner Dawson in December 5, 2007 (paper 3/17/2007), Applicants stated that Applicants do not further maintain the intention to provoke an interference between the present invention and U.S. Pat. No. 5,984,867 to Robert K. Deckman. However, in the file record, Applicants offered no reasons as to why the claimed invention is now different from U.S. Pat. No. 5,984,867 to Robert K. Deckman.

In order to keep the record of the prosecution clear and complete, the Applicants are respectfully requested to provide in the next response to this “Office Action” the reason why the present claimed invention is no longer considered as an interference to U.S. Pat. No. 5,984,867 to Robert K. Deckman.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 5 and 27 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2 and 4 of U.S. Patent No. 5,976,171 and over claims 5, 6, 8, claims 14-16 and claim 24 of U.S. Patent No. 7,288,065. Although the conflicting claims are not identical, they are not patentably distinct from each other because the current claimed invention and the above two patents all claim a retractor device including a ratchet mechanism.

Claim Rejections - 35 USC § 102/103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-3, 5-8 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jensen-3,572,326.

1.1. As to claim 1, Jensen-'326 (Fig. 1-2, 4) discloses frame member defined by elements 18 &19 & 20 & 42 & 23 & 24 & 22 & elongate bar 33, 1st blade/arm 49 and 2nd opposed blade/arm 47 coupled to the frame member (elements 42 and 33), 2nd blade movable toward or away 1st blade along 1st lateral axis defined by arm 47, foot/shoe 48 adjustable in a vertical direction relative to the elongated bar 33 and transverse (crossing or not parallel) to the direction in which the blades extend, locking mechanism 56 (Fig. 1 and 4) for locking foot 48 to the elongated bar 33 in a selected position along the axis defined by elongated bar 33 and actuator 34/35 for moving the foot 48 and 2nd arm/blade 47 vertically with respect to 1st blade 49. Please, notice that actuator 34/35 are movable along curved sections 18 and 20 to move foot 48 vertically with respect to 1st blade/arm 49. Actuator 34/35 also interconnects/connects foot 48 to 1st blade/arm 49 by elements 18, 19, 20, 22, 23, 24, 42, 43, 44 and 56 substantially as recited in the claim. It is reasonable to consider element 34/35 as actuator because one can effectively move actuator 34/35 to move foot 48 in a manner as recited in the claim.

1.2. As to claim 2, elongated bar 33 is coupled to 1st blade/arm 49 (by elements 18, 19, 20, 22, 23, 24, 42, 43, 44 and 56) and 2nd opposed blade/arm 47 (by element 56); 2nd blade/arm 47 is movable with respect to bar 33 along 1st axis defined by arm 47.

1.3. As to claim 3, 2nd blade 47 is rotatable about 2nd axis defined by element 56, which is transverse to 1st lateral axis defined by arm 47, and foot 48 is coupled to 2nd blade 47 so that foot 48 and 2nd blade 47 are rotatable together about the 2nd axis when element 34/35 is sliding along element 18/22.

1.4. As to claims 5 and 7-8, Jensen-'326 (Fig. 1-2, 4) discloses a frame defined by elements 18 &19 & 20 & 22 & 23 & 24 & 33 & 42, 1st blade/arm 49 coupled to frame element 42 and 2nd opposed blade/arm 47 coupled to the frame element 33, 2nd blade movable toward or away 1st blade along 1st lateral axis defined by arm 47, hexagonal head of arm 47 as an actuator for moving 2nd blade toward or away from 1st blade, foot 48 rotatably coupled to frame element 33 via coupling 56 and coupling 56 locks or free a relative rotation between foot 48 and frame element 33 as recited in the claim. Please notice that for claim 5, coupling 56 (F. 1, 4) meets the limitation "said coupling permitting rotation of said foot with respect to said at least one of the frame and first and second blades in one direction, and preventing rotation of said foot with respect to said at least one of said frame and the first and second blades in an opposite direction", because when coupling 56 is in an unlock condition, at least one can rotate foot 48 in one direction, and then lock the rotation by coupling 56 to prevent rotation of foot 48 at least in an opposite direction. Notice that claim 5 only requires that coupling 56 is capable of allowing a rotation of foot 48 in one direction and locking foot 48 of rotation in an opposite direction.

1.5. Alternatively, as to claims 5 and 8, F. 1 of Jensen-'326 shows frame/elongate bar 33, 1st blade/arm 46 and 2nd opposed blade/arm 47 being mounted to the elongate 33 by rotatable connector 56, hexagonal head of arm 46 as an actuator for moving 2nd blade toward or away from 1st blade along 1st axis defined by elongate bar 33, foot 48 rotatably coupled to frame element/elongate bar 33 via coupling 56 and coupling 56 locks or free a relative rotation between foot 48 and frame element/elongate bar 33 as recited in the claim

1.6. As to claim 6, foot 48 is linearly movable to frame element 33 along an axis defined by arm 48.

1.7. As to claims 1-3 and 5-8, notice that 1st blade 49 and 2nd blade 47 each includes a curved section/arcuate throat and a tip section/elongated vane section. Please, see 1st blade (connecting to arm 49) having a curved-hand shaped with curved section and 4 fingers/vanes as shown in F. 1 of Jensen-'326.

1.8. Alternatively, it would have been obvious to one of ordinary skill in the art to provide a retractor blade with a curved section/arcuate throat and vanes/extended tip sections as recited in the claims as this configuration would provide the blade to function as a hook to receive and keep the rib in place during a surgery procedure. It is well within level of an ordinary skill in the art to provide the blade as recited in the claims as this configuration of the blade involves only minor modification or design of a common used blade in the art.

In another alternative, it is well known to configure a rib retractor to have an elongate vane and a curved throat to receive and keep a rib in place during a surgery operation. For example, a blade as shown in F. 6 of Forder-4,344,420 includes arcuate throat and elongated vane substantially as recited in the claims. In view of Forder-'420, it would have been obvious to one of ordinary skill in the art to configure Jensen-'326 blade to have an arcuate throat and elongated vane as recited in the claims.

1.9. As to claim 14, Jensen-'326 (Fig. 1-2, 4) discloses elongate member 33, 1st arm/blade 49, 2nd arm/blade combination 47 having hexagonal head disposed opposite to the blade as a drive member to drive said 2nd blade toward or from 1st blade, shoe 48 having element 55 with a support surface to engage a patient's chest, locking member 56 or 64 (Fig. 4) allowing or locking a rotation between 2nd blade and elongate member 33 substantially as recited in the claim. Please notice that when element 35 is positioned at a position higher than that of element 34, one can translate locking member 56 together with 2nd arm/blade 47 away from 1st arm/blade 49 toward element 35 to rotate said 2nd arm/blade 47 relative to elongate

member 33 and lift a rib because in an unlocking condition, locking member 56 (F. 4) allows a rotation as well as a translation of 2nd arm/blade 47 relative to elongate member 33. Therefore, at least Jensen-'326 device is capable of performing the function as recited in the claims.

1.10. As to claim 16, shoe 48 is coupled to 2nd blade 47 via elongate locking member 56 and elongate member 33. A rotation of elongate 33 will rotate shoe 48 and 2nd blade 47 together.

Response to Arguments

Applicant's arguments filed 5/11/2009 have been fully considered but they are not persuasive.

As to claim 1, actuator 34/35 of Jensen-'326 (F. 1) interconnects foot 48 and 1st arm/blade 49 as indicated in above rejection.

As to claims 2-3, the term "coupled" is interpreted as "connected to", or "functionally co-operated with" and therefore the claims do not define anything different than the structure of Jensen-'326 device.

As to claim 5, please notice that coupling 56 (F. 1, 4) meets the limitation "said coupling permitting rotation of said foot with respect to said at least one of the frame and first and second blades in one direction, and preventing rotation of said foot with respect to said at least one of said frame and the first and second blades in an opposite direction" because when coupling 56 is in an unlock condition, one can rotate foot 48 in one direction, and then lock the rotation by coupling 56 to prevent rotation of foot 48 in an opposite direction. Notice that claim 5 only requires that coupling 56 is capable of performing the two actions as recited in the claims.

As to claim 8, Jensen-'326 also show another 2nd arm/blade 46 as recited in the claim (please see the above rejection, section 1.5).

As to 103(a) rejection of claims 1-3, please see section 1.8 above, which is substantially the same as presented in the previous "Office Action" (paper 1/22/2009) except for further explanation only for clarification of the Examiner's position in the previous "Office Action" (paper 1/22/2009).

As to claims 14 and 16, please see section 1.9 and 1.10 above, which is substantially the same as presented in the previous "Office Action" (paper 1/22/2009), except for further explanation only for clarification of the Examiner's position in the previous "Office Action" (paper 1/22/2009).

Response to Amendment

The amendment of independent claim 1 on 5/11/2009 under 37 CFR 1.131 has been carefully considered but is ineffective to overcome the prior art reference as indicated in the above rejection.

The same prior arts of reference are also applicable to reject the claims as indicated in the above rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/
Primary Examiner, Art Unit 3773